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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

**EBATES PERFORMANCE  
 MARKETING, INC. d/b/a  
 RAKUTEN REWARDS and  
 CARTERA COMMERCE, INC.,**

Plaintiffs,

**vs.**

**MyMail, Ltd.,**

Defendant.

Case No.: 5:20-cv-04768-LHK

**Defendant's Notice of Motion and  
 Motion To Dismiss Complaint  
 Under 28 U.S.C. § 2201 and FRCP  
 Rule 4(k)**

Date: To Be Determined  
 Time: 1:30 PM or T.B.D.

**DEFENDANT'S MOTION TO DISMISS COMPLAINT**

Pursuant to 28 U.S.C. § 2201, Defendant MyMail, Ltd., a Texas limited partnership, (“MyMail”) hereby notifies all parties that on \_\_\_\_\_ (date to be determined by the court) at 1:30 PM (or such other time as the court may determine) at the Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, Room 2112, San Jose, California, the defendant<sup>1</sup> will move this court to dismiss Plaintiffs Ebates Performance Marketing, Inc. D/B/A Rakuten Rewards (“Ebates”) and

<sup>1</sup> The Court's general practice in civil cases is to (1)..., and (2) to decide law and motion matters on the parties' filings without a hearing. In light of Covid19, when the Court holds a civil case management conference or law and motion hearing anytime before and including August 31, 2020, those proceedings will be held by telephone or videoconference. During this time, parties need not file motions to appear by telephone. For telephonic or videoconference proceedings, the Court will post the information on how the public and press may participate on the case dockets and the Court's public calendar.

1 Cartera Commerce, Inc's ("CCI's") Complaint, which seeks declaratory judgments of  
2 non-infringement as to four (4) MyMail patents.

3 As set forth more fully in MyMail's supporting memorandum of law, Ebates and  
4 CCI filed this action in bad faith during active licensing discussions, only after  
5 inducing MyMail to agree to a stay of any enforcement of the patent and requesting  
6 MyMail to refrain from any contact with customers of Ebates and CCI.

7 Further, Ebates has failed to plead any fact that would confer personal  
8 jurisdiction over MyMail upon this court under FRCP Rule 4(k) or any other law or  
9 rule.

10 Consequently, this Court should decline to exercise its declaratory judgment  
11 powers and dismiss the Plaintiff's Complaint, which was merely a bad faith tactical  
12 maneuver in an attempt to secure an advantageous but improper venue.

13 The facts and authorities in support of this motion are set forth in the  
14 accompanying memorandum of law.

15 Respectfully submitted,

16 This, August 14, 2020

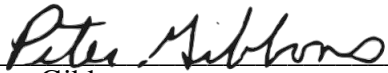
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California, by using the court's CM/ECF system on August 14, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 14, 2020

  
Peter Gibbons  
Attorney for MyMail, Ltd.